

JOSEPH W. SEMIEN

IBLA 78-458

Decided June 22, 1979

Appeal from decision of Montana State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease M 31348-D which had terminated for failure to pay rental timely.

Affirmed.

1. Oil and Gas Leases: Reinstatement

The postmark date on an envelope bearing payment of annual rental on oil and gas lease will be deemed to be the date of mailing in the absence of evidence to the contrary.

2. Oil and Gas Leases: Reinstatement

An oil and gas lease which has terminated for failure to pay rental timely may be reinstated under 30 U.S.C. § 188(c) (1976) if the failure was either justifiable or not due to a lack of reasonable diligence, and where neither has been shown the application must be rejected.

APPEARANCES: Joseph W. Semien, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Joseph W. Semien appeals from the decision of the Montana State Office, Bureau of Land Management (BLM), dated May 22, 1978, denying reinstatement of oil and gas lease M 31348-D which had terminated for failure to pay rental on or before the lease anniversary date. The rental payment was due on Monday, May 1, 1978.

Appellant's payment was postmarked Oakland, California, May 1, 1978, and arrived in the BLM office on Thursday, May 4. The lease had terminated by operation of law for failure to pay the advance rental on or before the anniversary date, according to the terms of 30 U.S.C. § 188(b) (1976) and its implementing regulation 43 CFR 3108.2-1(a).

Pursuant to 30 U.S.C. § 188(c) (1976), appellant's lease can only be reinstated if the failure to pay rental timely is shown to be "either justifiable or not due to a lack of reasonable diligence on the part of the lessee." 43 CFR 3108.2-1(c).

Appellant stated in a letter to BLM dated May 16, 1978, that "[b]ecause of a misunderstanding the rental fee was sent May 1." He also noted some confusion between the rules for mailing tax payments, which permit mailing by the date due, and the rules for oil and gas lease rentals, which require receipt by the data due. On appeal, however, appellant alleges that it is possible his wife was mistaken about the May 1 mailing date and that he has every reason to believe the letter was in transit for several days before the postmark date. He surmises that the Post Office may not have cancelled the payment letter at the originating office, and further states he has every reason to believe reasonable diligence was employed. There was no offer of any proof as to where or when the rental was mailed.

[1] The postmark date stamped on a rental payment envelope is deemed to be the date of mailing, absent evidence to the contrary. E.g., Edward Malz, 33 IBLA 22 (1977). Appellant's rental payment letter was postmarked "May 1, 1978." Since no firm evidence has been submitted to the contrary, the Board must presume that appellant's payment was mailed on that date.

[2] Such a mailing of rental payment on the date it is due does not constitute reasonable diligence. E.g., Jones K. Mullinax, 35 IBLA 73 (1978). "Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal and delivery of the payment." 43 CFR 3108.2-1(c)(2). Gent Davis, 36 IBLA 311 (1978).

Neither has appellant shown a justifiable excuse for the delay. Appellant has changed his original position that the delay occurred because of the mistaken belief that a rental would be timely if mailed by the due date; however, a brief comment thereon is appropriate. Failure to exercise reasonable diligence in making rental payments is justifiable if caused by extenuating circumstances beyond the control of lessee. Pauline G. Thornton, 17 IBLA 251 (1974). The mistaken assumption that tax mailing regulations are the same as oil and gas rental regulations has been held not a justifiable excuse. E.g., Frank J. Germano, 18 IBLA 390 (1975).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joseph W. Goss
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Joan B. Thompson
Administrative Judge

